

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319**

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**CHERYL J DOCTER**

Claimant,

and

**CEDAR FALLS LUTHERAN**

Employer.

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**HEARING NUMBER: 12B-UI-16021**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**NOTICE**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION: 96.5-2-A, 96.3-7**

**DECISION**

**UNEMPLOYMENT BENEFITS ARE DENIED**

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board, one member dissenting, reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED**.

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Monique F. Kuester

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Cloyd (Robby) Robinson

**DISSENTING OPINION OF JOHN A. PENO:**

I respectfully dissent from the decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge in its entirety. The Claimant faxed a resident's critical lab results, as opposed to calling the doctor as previously ordered. Although she had several prior written warnings, the Employer failed to provide any proof that she ever received any warning against faxing such information. According to Mr. Hamilton, the Claimant was repeatedly told to call, and not fax the doctor. Her supervisor, Ms. Hershey, testified that it was common practice to fax, and not call the doctor. There was no policy on what was considered critical and not to be faxed.

The Claimant was in contact with the patient's doctor for two days by fax. The doctor had adjusted the patient's insulin. The patient's blood sugars had been high for over a week for which the doctor was aware. The Claimant believed the situation was not critical because the patient's blood sugars had not drastically changed. She acted appropriately, and in good faith as an experienced nurse of 28 years.

I disagree with the administrative law judge's conclusion that the Employer provided evidence on how to notify a doctor regarding critical lab results, as I find the Employer's definition of 'notify' to be ambiguous. In addition, I give very little weight to the Claimant's past disciplines, as this case did not turn on past acts. At worst, I would conclude that the Claimant's faxing of the information was an act of poor judgment in this regard, and did not rise to the legal definition of misconduct. Lastly, the delay in her discharge was not the Claimant's fault; she didn't come in for the meeting because of an off-duty injury she suffered on the 17<sup>th</sup> that the Employer was aware of. Based on the foregoing, I would allow benefits provided the Claimant is otherwise eligible.

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John A. Peno

AMG/fnv